

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.40704 of 2002

M.Shakthivel

.. Petitioner

Vs.

- 1.The Director General,
Central Industrial Security Force,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.
2. The Deputy Inspector General,
Central Industrial Security Force,
D Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.
- 3.The Commandant,
Central Industrial Security Force,
Neyveli Lignite Corporation Unit,
Newveli, Cuddalore District-607 807.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records relating to the impugned order of the second respondent in No.V-11014/32/2001/L&R (SZ)-3939 dated 03.05.2001, confirming the order of the third respondent in order No.V-15014/CISF/NLC/Maj.32-99/2000-10324 dated 30.12.2000 and quash the same.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.M.Dhamodharan, SCGSC.,

ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the second respondent dated 03.05.2001, inflicting the penalty of reduction of pay by two stages i.e. from 3425/- to Rs.3275/- for a period of two years, which will have the effect of postponing his future increments of pay, the petitioner has filed the above writ petition to wash those orders.

2. According to the petitioner, after his appointment as Constable in the Central Industrial Security Force, at the time of passing of the impugned order, he was transferred from Madhya Pradesh to the CISF Unit, Neyveli Lignite Corporation, Neyveli. During his tenure at CISF, from the month of August to October 1999, owing to his ailments, he availed leave on medical grounds on different dates and he had also duly submitted the medical certificates issued by the Government Medical officers. However, a charge memorandum was issued by the third respondent in his proceedings dated 21/22.12.1999 containing four charges. After receipt of the said memorandum, he submitted his explanation on 07.01.2000 denying all the charges framed against him. Thereafter, an enquiry officer was appointed on 17.01.2000 to enquire into the charges framed against him. Finally, enquiry officer submitted his report on 28.11.2000 holding that all the charges have been proved and he was served with a copy of the enquiry report. Thereafter, he submitted his detailed explanation to the enquiry report on 25.12.2000. The disciplinary authority after rejecting his explanation, passed a final order on 30.12.2000 imposing a penalty of reduction of pay by two stages i.e. from Rs.3425/- to Rs.3275/- for a period of two years which will have the effect of postponing the increments of pay. Against the said order, he preferred an appeal to the Deputy Inspector General, CISF Southern Zone, Chennai, the second respondent herein on 31.01.2001, which is impugned in this petition. Having no other remedy, the petitioner has filed the above writ petition.

3. Heard the learned counsel for the petitioner as well as the learned Additional Central Government Standing Counsel for the respondents.

4. After taking us through the memorandum of charges, explanation, enquiry proceedings, decision of the disciplinary authority and the order of the appellate authority, the learned counsel for the petitioner has submitted that though the petitioner had taken treatment for his ailment and secured certificate from the Doctors of Neyveli Lignite Corporation, the respondents have not considered the same. In any event, according to him, the punishment is disproportionate to the charges levelled against him and seeks intervention by this Court.

5. On the other hand, the learned Additional Central Government Standing Counsel submitted that inasmuch as the petitioner was afforded adequate opportunity in the enquiry and he has also participated in the

same and in view of the factual conclusion arrived at by the enquiry officer and the same was considered by the disciplinary authority and approved by the appellate authority, there is no valid ground for interference by this Court and agreed for dismissal of the writ petition.

6. We have perused the materials and carefully considered the rival contentions.

7. In order to understand the contentions raised, it is useful to refer four charges framed against the petitioner.

ARTICLE-I

"No.892331521 Constable M.Shaktivel of CISF Unit, NLC Neyveli was advised 05 days medical rest from 11.09.1999 to 15.08.1999 and declared him fit to resume his duty wef:16.08.99 by the NLC GH. After declaring him fit for duty by the authorised Hosptial, he went to Primary Health Centre, Karmankudi, Vridhachalam on his own and obtained 10 days medical rest from 16.08.99 to 25.08.99 deliberately with a view to avoid election duty. This act on the part of said Constable is gross misconduct, dereliction towards his duties and also highly unbecoming a member of a disciplined Force (CISF) of the Union." Hence the charge.

COMMANDANT
CISF UNIT, NLC, NEYVELI.

ARTICLE-II

No.892331521 Constable M.Shaktivel of CISF Unit, NLC Neyveli was detailed for GPE-1999 duty in Coy. No.425 vide movement order dated 27.08.99. while on election duty, he deliberately took medical rest for 15 days w.e.f. 06.09.99 from GH Kattumannar Koil so as to avoid the said duty. On 06.09.99 the said Constable was returned by the in-charge of the said Coy. To report to the Unit, but he did not reported back to the Unit till 20.09.99 or reported to the NLC GH for treatment, immediately. This act on the part of said Constable amounts to gross misconduct, disobedience, negligent on duty and also highly unbecoming a disciplined member of an Armed Force (CISF) of the Union. Hence the charge.

COMMANDANT
CISF UNIT, NLC, NEYVELI.

ARTICLE -III

No.892331521 Constable M.Shaktivel of CISF Unit, NLC Neyveli was detailed for GPE-1999 duty in Coy.No.423 vide movement order dated 21.09.99 with the direction to report Shri H.C.Lamba, Asst. Commandant, in-charge of the said Coy., for replacement of Constable K.Krishnan. But he did not obey the lawful orders and from Government Stanley Hospital, Chennai for avoiding the said duty and returned back to Unit on his own on 07.10.99.

This act on the part of said Constable is severe breach of conduct, disobedience of lawful orders and highly unbecoming a member of a disciplined force (CISF) of the Union. Hence the charge.

COMMANDANT
CISF UNIT, NLC, NEYVELI.

ARTICLE-IV

No.892331521 Constable M.Shaktivel is a habitual offender on various charges of misconduct for which he was awarded ten deterrent punishments during the earlier occasions to mend his ways, but he did not improve his ways and conduct and thus he proved that he is an incorrigible person. Hence the charge.

COMMANDANT
CISF UNIT, NLC, NEYVELI.

8. It is true that the petitioner has submitted his explanation since the same was not acceptable, an enquiry officer was appointed and it is not in dispute that the petitioner has participated in the enquiry. Though on the side of the prosecution several witnesses were examined, we are very much concerned about the evidence of two Doctors examined on the side of the enquiry officer viz., Doctor G.Moorthy, CW2 and Dr.R.Veeranarayanan, CW3. The statement of the above mentioned two Doctors are available at pages 16 and 17 of the typed set of papers filed by the learned counsel for the petitioner. Out of the two doctors, Dr.G.Moorthy, CW2 is attached to NLC Hospital, Neyveli, and Dr.R.Veeranayaranan, CW3 is attached to Government Hospital, Kattumannar Koil. On going through the statements, we are able to notice that the petitioner had complained of fever and body pain and on the next occasion, cough and cold. It is not in dispute that he had no serious illness. Even the evidence of the abovesaid Doctors and other materials were considered by the disciplinary authority. It is further seen that whenever the petitioner was questioned about his illness, he has obtained certificates from the Doctors other than the NLC Hospital. The disciplinary authority has also observed that he is a habitual offender and such type of habitual offenders should not be encouraged in a disciplined Force like CISF. It is also brought to our notice that whenever the petitioner was deployed for election duty, he availed medical rest to avoid the same. The further information is that he had been awarded 10 punishments within a short span of 11 years of service in the CISF. With regard to the same, the prosecution has produced relevant documents through PW9. All these material aspects were considered by the disciplinary authority, by taking note of the seriousness of the proved charges and the punishments imposed on the petitioner.

9. We also perused the order of the appellate authority, who after finding that there is no infirmity in conducting enquiry proceedings and

the punishment imposed on him is proportionate and commensurate with the gravity of the offence committed by the petitioner, dismissed the appeal.

10. In the light of what is stated above, more particularly, in view of the statements of two Doctors referred to above and of the fact that the petitioner was afforded adequate opportunities in the enquiry, we find that there is no ground for interference. Though the argument was advanced for reduction of the punishment, in view of the factual information that the petitioner obtained leave on several occasions i.e.during election time and also he had been awarded 10 punishments within a period of 11 years, we are not inclined to show any leniency and we are satisfied that taking note of all these aspects, the disciplinary authority has inflicted appropriate punishment, which was confirmed by the appellate authority. We do not find any valid ground for interference. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Director General,
Central Industrial Security Force,
Block No.13, CGO Complex,
Lodhi Road, New Delhi.

2. The Deputy Inspector General,
Central Industrial Security Force,
D Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

3.The Commandant,
Central Industrial Security Force,
Neyveli Lignite Corporation Unit,
Newveli, Cuddalore District-607 807.

1 cc To M/s.T.M.Sugesh, Advocate, SR.46048.

1 cc To M/s.M.Dhamodharan, Advocate, SR.46021.

W.P.No.40704 of 2002

AVM(CO)

RVL 26.10.2006